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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111207734-1733-01]

RIN 0648-BB50

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2012 Annual Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to reduce the 2012 annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages in 2010 and to prevent overfishing.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents, the 2010-2012 Herring Specifications and Amendment 4 to the Herring Fishery Management Plan (FMP), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. These documents are also accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments, identified by NOAA-NMFS-2011-0275, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0275 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Adjustment to 2012 Herring Catch Limits.”
- Fax: (978) 281-9135, Attn: Carrie Nordeen.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978-

281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the Herring FMP developed by the New England Fishery Management Council (Council), and implemented by NMFS, in 2000. The Council developed herring specifications for 2010-2012, which were approved by NMFS on August 12, 2010 (75 FR 48874). Although herring is not overfished and is not experiencing overfishing, the herring annual acceptable biological catch for fishing years 2010-2012 (106,000 mt) was reduced from previous years (145,000 mt in 2009) due to concerns about a retrospective pattern in the 2009 herring stock assessment that over-estimates biomass.

The stock-wide herring ACL (91,200 mt) is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine (GOM) and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The herring stock complex is considered to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component. While the stock-wide herring ACL for 2010-2012 was not reduced below the 2008 catch level, the management area sub-ACLs were reduced from 2009 levels by 20 to 60 percent. The management area sub-ACLs established for 2010-2012 were: 26,546 mt for Area 1A, 4,362 mt for Area 1B, 22,146 mt for Area 2, and 38,146 mt for Area 3.

Amendment 4 to the Herring FMP (Amendment 4)(76 FR 11373, March 2, 2011) revised the specification-setting process, bringing the Herring FMP into compliance with ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the FMP, if NMFS determines catch will reach 95 percent of the sub-ACL allocated to a management area or seasonal period, then NMFS prohibits vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. This AM slows catch to prevent or minimize catch in excess of a management area or seasonal period sub-ACL. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided for overage deductions. If the catch of herring in any given fishing year exceeds any ACL or sub-ACL, the overage will subsequently be deducted from the corresponding ACL/sub-ACL.

Fishing year 2010 was the first year that NMFS monitored herring catch against the recently reduced management area sub-ACLs. NMFS experienced difficulty determining when to implement the 2,000-lb (907.2-kg) possession limit in Area 1B because of a pulse of fishing effort in that area. NMFS had similar difficulties determining when to implement the possession limit in Area 1A because catch rates were highly variable. Ultimately, catch from Areas 1B and 1A exceeded their allocations by 1,639 mt and 1,878 mt, respectively. These experiences demonstrated that more timely catch reporting was needed to better monitor catch against sub-ACLs and to allow catch to achieve, but not exceed, management area sub-ACLs. Therefore, in September 2011, NMFS revised vessels reporting requirements to obtain more timely catch reports (76 FR 54385, September 1, 2011). As a result of that rulemaking, limited access herring vessels are required to report herring catch daily via vessel monitoring systems, open access

herring vessels are required report catch weekly via the interactive voice response system, and all herring-permitted vessels are required to submit vessel trip reports (VTRs) weekly.

Proposed Measures

In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 2010 overages from 2012 catch limits. Therefore, in 2012, the sub-ACL for Area 1A would be 24,668 mt (reduced from 26,546 mt) and the sub-ACL for Area 1B would be 2,723 mt (reduced from 4,362 mt). The sub-ACLs for Areas 2 and 3 would remain unchanged at 22,146 mt for Area 2 and 38,146 mt for Area 3.

NMFS determined 2010 herring landings based on dealer reports (Federal and state) containing herring purchases, supplemented with VTRs (Federal and State of Maine) containing herring landings. NMFS compared dealer reports to VTRs for all trips that landed herring in 2010. Because VTRs are generally a hail weight or estimate of landings, with an assumed 10 percent margin of error, dealer reports are a more accurate source of landings data. However, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10-percent or more, it was assumed that the dealer report for that trip was in error. In those instances, the amount of herring reported via VTR was used to determine the amount of herring landed on that trip. Herring landings in the VTR database were checked for accuracy against the scanned image of the paper VTRs submitted by the owner/operator of the vessel. VTR landings were also verified by comparing reported landings to harvesting potential and applicable possession limits for each vessel. Federal dealer reports for 2010 were finalized in June 2011 and state dealer reports for 2010 were finalized in September 2011.

Herring landings reported on the VTRs were assigned to herring management areas using

latitude and longitude coordinates. VTRs with missing or invalid latitude/longitude coordinates were manually corrected using the statistical area reported on the VTR. If no statistical area was reported on the VTR, then a combination of recent fishing activity and a review of the scanned images of the original VTR were used to assign landings to herring management area. Dealer reports without corresponding VTRs were prorated to herring management area using the proportion of total herring landings stratified by week, gear type, and management area.

As NMFS was reviewing the 2010 herring data, and comparing individual VTRs with individual dealer reports, it resolved data errors resulting from misreporting. Common dealer reporting issues were: Missing dealer reports; incorrect or missing VTR serial numbers; incorrect or missing vessel permit numbers; and incorrect dates. VTRs had similar errors. Common VTR reporting issues were: Missing VTRs; missing or incorrect dealer information; incorrect amounts of landed herring; incorrect dates; and missing or incorrect statistical area. The quality of herring landings data is affected by unresolved data errors; therefore, NMFS strongly encourages vessel owner/operators and dealers to double check reports for accuracy and ensure reports are submitted on a timely basis.

Discards of herring in 2010 were determined by extrapolating Northeast Fisheries Observer Program (observer) data to the entire herring fishery. The amount of observed herring discards (“Atlantic herring” and “herring unidentified”) was divided by the amount of observed fish landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2010. The amount of discards was determined for each management area and gear type. Observer data for 2010 were finalized in April 2011.

NMFS calculated the total herring catch for 2010 by adding the amount of herring

landings to the amount of herring discarded. The methodology used by NMFS to calculate the amount of landed herring and the amount of discarded herring was reviewed by the Council's Herring Plan Development Team (PDT). NMFS convened a Herring PDT conference call on October 19, 2011, to review landed catch and discard methodology. The Herring PDT recommended that prorated dealer reports should account for fishing effort and seasonality in its calculations. Based on the Herring PDT's recommendations, NMFS revised its methodologies to include stratification by week, gear type, and area for dealer reports that were prorated to management area. Additionally, the Herring PDT recommended that the extrapolation of discards be stratified by gear type and area. NMFS revised its discard methodology accordingly. NMFS convened a follow-up Herring PDT conference call on November 3, 2011, and updated the PDT on its revised methodology. The Herring PDT concluded that the methodologies used by NMFS to calculate the total amount of herring catch (landings and discards) in 2010 were appropriate.

The following chart contains information on the 2010 herring fishery:

Total Catch of Atlantic Herring in 2010

Management Area	Sub-ACL (mt)	Landed Herring (mt)	Discarded Herring (mt)	Total Herring Catch (mt)	Herring Catch as Percentage of Sub-ACL
1A	26,546	28,364	60	28,424	107
1B	4,362	5,997	3	6,001	138
2	22,146	20,781	50	20,831	94
3	38,146	17,573	23	17,596	46

Classification

Pursuant to section 304 (b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The National Environmental Policy Act analysis to support this action was completed in Amendment 4 (76 FR 11373, March 2, 2011).

This proposed rule has been determined to be not significant for purposes of Executive Orders 12866. This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

In 2010, there were catch limit overages in herring management areas 1A and 1B equal to 1,878 mt and 1,639 mt, respectively. In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 2010 overages from 2012 catch limits. Therefore, in 2012, the sub-ACL for Area 1A would be 24,668 mt (reduced from 26,546 mt) and the sub-ACL for Area 1B would be 2,723 mt (reduced from 4,362 mt).

Amendment 4 analyzed the effects of deducting ACL/sub-ACL overages from the subsequent corresponding ACL/sub-ACL. During a year when the ACL/sub-ACL is exceeded, fishery participants may benefit economically from higher catch. In the subsequent year, when the amount of the overage is deducted from that ACL/sub-ACL and the amount of harvest is lower, fishery participants may experience negative economic impacts. Since deductions are the

same magnitude as the overages, there would be no overall change to the amount of fish available for harvest. Therefore, if participants are active in the fishery during the overage year and the deduction year, the total economic impact on participants would be neutral.

In 2010, 101 vessels were issued limited access herring permits and 2, 258 were issued open access herring permits. All participants in the herring fishery are small entities as defined by the SBA under the Regulatory Flexibility Act, as none grossed more than \$4 million annually, so there would be no disproportionate economic impacts on small entities.

Total herring revenue in 2010 equaled approximately \$18.8 million for limited access vessels and \$150,000 for open access vessels. Because most vessels that harvest herring participate in other fisheries, revenue generated by herring catch is only a portion of their income. Herring revenue averaged 20 percent of total fisheries revenue for limited access vessels in 2010 and less than 1 percent of total fisheries revenue for open access vessels in 2010. The reduced sub-ACLs in Areas 1A and 1B are estimated to equal \$1 million in lost revenue in 2012. Absent the sub-ACL reductions in Areas 1A and 1B, the total potential herring revenue in 2012 is estimated to be \$26.4 million. The sub-ACL reductions in Areas 1A and 1B would reduce the total potential herring revenue by 4 percent in 2012. While this action reduces the amount of fish available for harvest, both the fishery-wide and individual-vessel economic

effects are anticipated to be minimal because the reduction is relatively minor and herring vessels generate most of their revenue participating in other fisheries.

For all the reasons described above, an initial regulatory flexibility analysis is not required and none has been prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 19, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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